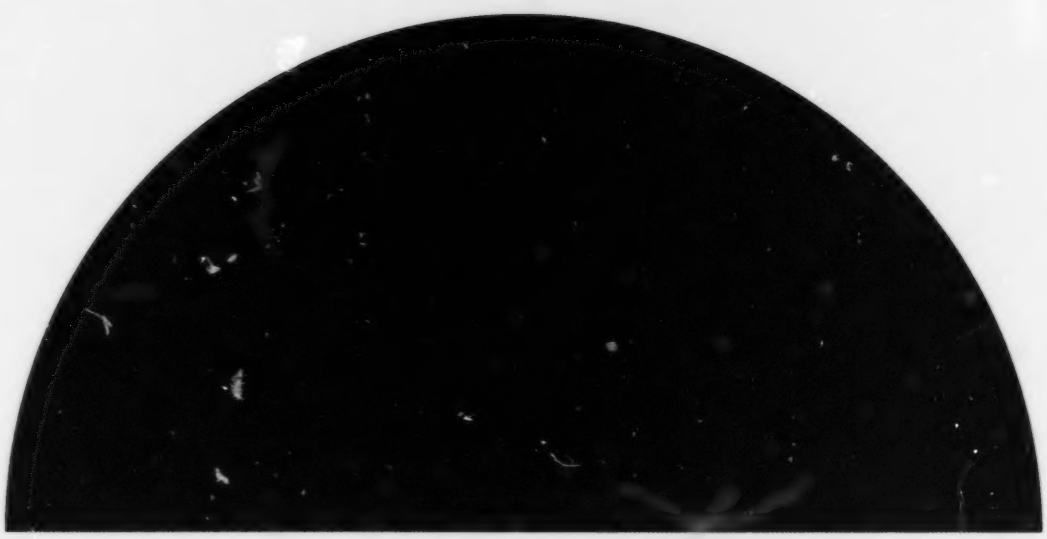
Environment Canada Environnement Canada
Health and Welfare Canada Santé et Bien-être social Canada

HIGHLIGHTS AND STEPS TO IMPLEMENTATION

SPRING 1987



Canadian Environmental Protection Act

Canada

HIGHLIGHTS AND STEPS TO IMPLEMENTATION

CANADIAN ENVIRONMENTAL PROTECTION ACT

SPRING 1987

Aussi disponible en français

87-05047/

TABLE OF CONTENTS

	PAGE
HIGHLIGHTS OF CANADIAN ENVIRONMENTAL PROTECTION ACT	1
HIGHLIGHTS OF IMPROVEMENTS: CANADIAN ENVIRONMENTAL PROTECTION ACT	5
SUMMARY OF DRAFT ENFORCEMENT AND COMPLIANCE POLICY FOR DISCUSSION	9
IMPLEMENTATION OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT	12

HIGHLIGHTS OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT

- Substantially improved since the release of draft legislation in December 1986 as a result of consultations. (See "Highlights of Improvements to the Canadian Environmental Protection Act".)

- Defines "environment" for the first time in federal law. Embodies an ecosystem approach to land, water and air pollution.

- Emphasizes protection of the environment for its own sake, as well as the effect of the interaction of environment and human health.

- Approach is "protect and prevent", not just "react and cure".

- Controls chemical substances through all stages of their life cycle, from importation or research and development, through commercial manufacture transportation distribution, use and ultimate disposal.

- New chemicals will be assessed before they can be used in Canada.

- Includes the products of biotechnology and controls nutrients.

- Consolidates the environmental protection powers of the Clean Air Act, the Environmental Contaminants Act, the Canada Water Act, Part III, the Ocean Dumping Control Act, and the Department of the Environment Act, Subsection 6(2).

- Regulatory protections provided by the legislation being consolidated will be continued under CEPA. Revisions and new regulations will be developed through public consultation in accordance with the Citizens' Code of Regulatory Fairness and the Canadian Charter of Rights and Freedoms.

- Recognizes other federal environmental protection legislation such as the Transportation of Dangerous Goods Act (Minister of Transport) and the Pest Control Products Act (Minister of Agriculture).

- A draft Enforcement and Compliance Policy is provided for discussion at the same time. Goal of the policy is to outline for all parties how Environment Canada will apply the Act, encourage and ensure compliance, and take action in cases of violations of the Act.

- The Government will provide additional resources totalling $37 000 000 over the next five years for assessment of chemicals and enforcement.

- Maximum penalties under the Act are the stiffest ever in any federal environmental protection legislation. Examples include:

  - the most serious violations can be prosecuted under the Criminal Code with a maximum penalty of life imprisonment;

  - unlimited fines and/or up to five years imprisonment following conviction of recklessly causing an environmental disaster or wantonly risking death or harm to a person;

  - fines of up to $1 000 000 and/or up to three years jail term for failing to provide the requested information on a substance that may be toxic;

  - fines of up to $1 000 000 and/or up to three years imprisonment for manufacturing or importing a prohibited substance; and

  - fines of up to $200 000 and/or up to six months prison for failing to assist an inspector or for knowingly providing an inspector with false information.

- Each day of a violation can be considered a separate offense; corporate officers can be held personally responsible.

- Inspectors can seize materials relevant to any suspected violation of the Act; inspectors can seize ships suspected of illegally dumping wastes at sea;

- The Minister has emergency powers to act immediately in case of the need for an urgent response to an environmental problem. Any ministerial orders must be confirmed by Governor in Council within 14 days to remain in effect.

- Minister can order recalls of any product containing a prohibited substance.

- Public participation and access is extensive, including:

  - right of a person who has or may sustain loss or damage as a result of action prohibited by the Act to seek an injunction in the courts to stop or prevent the action;

  - right of any 12 persons to petition the Minister to investigate an alleged violation. Minister will respond with his findings;

  - right of a person to have his or her identity kept confidential when reporting an alleged violation to an inspector;

  - right of a person to petition the Minister to have a substance included on the "Priority Substances List". Minister will respond with his decision;

  - right of a person to appeal a decision not to regulate a substance as toxic. Appeal will be considered by a Board of Review;

  - opportunity for individuals to appear before boards of review for a wide range of purposes under the Act. A Board may award costs to those appearing before it; and

- opportunity for individuals to exercise their Access to Information Act rights greatly expanded from existing legislation.

- Recognizes the shared jurisdiction nature of environmental protection among federal, provincial and territorial governments.

- Calls for the negotiation of federal-provincial agreements which will identify the roles of each level of government in administering the Act to avoid duplication of cost and effort, and promote efficiency.

- Requires federal consultation with the provinces and territories when regulations are being developed. Allows for federal-provincial advisory committees to the Ministers.

- Comprehensive management of chemicals will be established by:

  - a "Priority Substances List" identifying chemicals requiring urgent assessment and evaluation.

  - "Domestic Substances List" naming all substances governed by the Act that are in commercial use in Canada. Expected to list more than 30 000 substances.

  - "Non-domestic Substances List" naming all chemicals known to be used outside Canada, but not in Canada. It may contain the names of more than 70 000 substances. Industry will be required to provide information to government to permit an assessment of the need to control.

- Establishes the requirement for the Ministers to develop national environmental quality guidelines and codes of practice.

- Provides authority to develop regulations and guidelines to govern activities and operations for all federal lands and undertakings.

HIGHLIGHTS OF IMPROVEMENTS
CANADIAN ENVIRONMENTAL PROTECTION ACT

On 18 December 1986, the draft Environmental Protection Act was released for consultation. Information and consultation sessions were held in every province and territory. Bilateral or multilateral meetings included provincial and territorial representatives, industry, labour, environmental groups and the general public. A National Consultation Meeting was held 22-24 March 1987.

The meetings, as well as the 350 written briefs and submissions which the Minister received, resulted in specific recommendations for more than 100 changes. In addition, countless clarifications of the wording of the Act were possible because of suggestions made by the public. The result is a substantial re-write of most of the Act.

Highlights of the substantive changes are:

- The approach of the Act has been reworked to provide greater emphasis on the protection of the environment for its own sake.

- "Environment" is defined for the first time in a federal statute. By including the phrase "the interacting natural systems", the definition embodies an ecosystem concept permitting a more comprehensive environmental protection approach.

- "Substance" is now defined to include the products of biotechnology as well as industrial emissions and effluents or wastes.

- "Toxic Substance" is now defined so that protection can be provided at three levels: protection of the environment, protection of the environment because of its linkage with human life, and protection of the health of Canadians.

- Anyone who has suffered, or might suffer, loss or damage as a result of action prohibited by this Act can seek an injunction in the courts to stop or prevent the action.

- Whistleblower protection is now guaranteed by providing confidentiality to a person reporting a suspected violation.

- Serious violations of the Act can now be prosecuted under the Criminal Code and the maximum penalty can be life imprisonment.

- The restrictions on trial by jury have been eliminated.

- The maximum penalties for many violations have been increased. For example, the penalty for summary conviction now includes the possibility of up to six months imprisonment.

- Advisory Committees can now be established on any aspect of the Act. Their reports will be made public.

- Special federal-provincial Advisory Committees can also be established.

- Any 12 Canadians can now petition the Minister to investigate an alleged violation, and the Minister must respond with the findings of his investigation.

- Boards of Review can now be established for several purposes under the Act. The scope of appeals has been broadened to allow an appeal against a decision not to regulate. Board reports will be made public unless there are overriding public interest considerations.

- Boards of Review will have the authority to award costs, to decide who shall pay the costs, and to whom the costs must be paid.

- The Minister will establish and maintain three lists of chemicals: a Priority Substances List, which establishes the priority for assessment of existing substances; a Domestic Substances List, which will name all

substances currently used in Canada; and a Non-Domestic Substances List, which will name all substances known to be used commercially outside Canada but not in Canada. The Domestic and Non-Domestic Lists are expected to include the names of approximately 30,000 and 70,000 substances respectively.

- Two schedules of substances will be created to complement the Lists: Schedule I will contain the names of all substances controlled under this Act, and the reasons for their control; Schedule II will contain the names of all substances that are controlled in Canada and cannot be exported without notifying the Minister and the authorities in the importing country.

- Anyone may petition the Minister to have a substance placed on the Priorities Substance List. The Minister must respond within 60 days.

- In case of the need for an urgent response to an environmental problem, the Minister has immediate powers to act. Governor in Council approval must be obtained within 14 days of the action for the effect of the ministerial order to continue.

- The Ocean Dumping Control Act has been consolidated into the CEPA, linking it with the life-cycle control of toxic substances.

- The CEPA specifically recognizes the authorities and responsibilities of other Acts of Parliament, such as the Transportation of Dangerous Goods Act.

- New provisions expand the monitoring responsibilities of Environment Canada regarding toxic substances in the environment. The data will be made public and the department will use it to develop advice on the need for regulatory intervention and control under this Act or any other federal statute, such as restrictions on pesticides controlled under the Pest Control Products Act.

- Ministerial accountability to the public is enhanced through the requirement of an annual report to Parliament. Further accountability is provided through periodic reports on the state of the Canadian environment.

SUMMARY OF THE DRAFT ENFORCEMENT AND COMPLIANCE POLICY FOR DISCUSSION

This draft policy is being released to encourage input from all interested parties so that a comprehensive, workable and clear enforcement and compliance system can take effect as soon as Parliament passes the Canadian Environmental Protection Act (CEPA). Final date for submissions is October 31, 1987.

The goal of the Enforcement and Compliance Policy is to outline:

- how Environment Canada will apply the new Act;
- how Environment Canada will encourage and ensure compliance; and
- what will be done in cases of violations of the Act.

Officials responsible for securing compliance with the new Canadian Environmental Protection Act will be guided by a number of underlying principles:

- prevent environmental damage before it occurs;
- ensure a fair and consistent application across Canada;
- ensure that enforcement response will be proportionate to the nature of the offence; and
- adhere to the Canadian Charter of Rights and Freedoms as well as to the Citizens' Code of Regulatory Fairness.

Environment Canada will encourage compliance by informing all parties of enforcement practices and actions; by sharing technical information with industry and all levels of government; and by assisting in the development of new technology to prevent pollution.

All interested parties will have the opportunity to participate in the ongoing review and development of regulations, as well as national environmental quality objectives, guidelines and codes of practice.

Individuals will play an important role in ensuring enforcement and compliance. Any 12 persons can petition the Minister to investigate an alleged violation. The Minister must provide information on the outcome of the investigation.

Individuals are encouraged to report suspected violations of the Act; their identity will be protected under the Act.

Environment Canada will encourage the use of environmental audits by managers of industry and operators of federal, provincial and municipal facilities to help achieve compliance.

Enforcement officials will inspect facilities where there are materials or activities governed by the Act.

Inspectors will examine all suspected violations of the Act. In choosing an enforcement action, the government will consider the following elements:

- nature of the violation;
- means of achieving compliance in the shortest time, with no further occurrence of the violation; and
- the deterrent impact of enforcement actions on other violators.

Enforcement actions under the Act include the following:

- warnings;
- compliance guarantees;
- orders by the Minister;
- directives by inspectors;
- ticketing;
- court injunctions;
- prosecutions;
- penalties, including fines and court orders upon conviction; and

- recovery of cleanup costs by government through civil suit.

The draft enforcement and compliance policy specifies the criteria and applicability of each type of enforcement action. For example, enforcement officials will always recommend prosecution where the alleged violation would result, or has resulted, in serious harm or risk to the environment, or to human life or health.

IMPLEMENTATION OF THE CANADIAN ENVIRONMENTAL PROTECTION ACT

The Canadian Environmental Protection Act (CEPA), introduced in Parliament today, is the key element of the federal commitment to strengthen environmental protection in Canada. Passage of the new Act, however, is only the first of many steps that must be taken in an ongoing agenda. Also required will be:

- the negotiation of bilateral environmental protection agreements between the federal government and each province and territory;
- the completion of an enforcement and compliance policy which will ensure a fair, predictable and consistent application of the law;
- the development of regulations to effect the better management of chemicals and the products of biotechnology; and
- the assessment and evaluation of existing chemicals. This is an enormous international task in which Canada will play a full part.

Environmental protection is a global responsibility. In Canada the obligation is shared by federal, provincial and territorial governments. As well industry, labour, environmental groups and the public at large have legitimate interests and responsibilities. Canadian experience confirms that consensus leads to commitment; with CEPA, this will continue to be achieved through consultation and cooperation.

1. Passage of the Act

As with any government Bill, CEPA will go through three stages of approval: consideration by the House of Commons, consideration by the Senate and finally, Royal Assent.

In the House of Commons, the Bill will proceed from 1st reading, or introduction; through 2nd reading debate. Then clause-by-clause consideration by an all-party Committee of the House, followed by similar consideration by the entire House; to 3rd reading debate. The government is expected to present the Bill for 2nd reading in the fall of 1987.

Any interested person or group may have the opportunity to provide comments in writing to the legislative committee. As well, the committee may decide to hold hearings and to invite witnesses to appear and present briefs on the proposed legislation.

After 3rd reading, the Bill will be transmitted to the Senate where it will follow the same steps. After acceptance by the Senate, the Act is presented to the Governor-General for Royal Assent and proclamation as a law of the land.

2. Negotiation of Federal-Provincial Agreements

Provision is made for federal-provincial agreements which will identify the roles of each level of government in administering this Act. The agreements will avoid duplication of cost and effort and bring the resources of both levels of government to bear efficiently upon environmental protection.

Preliminary discussions have already begun with some provinces and are scheduled to continue through the remainder of 1987. The agreements will be concluded by the time CEPA receives Royal Assent.

3. Enforcement and Compliance

A draft Enforcement and Compliance Policy was released at the same time as the tabling of CEPA in Parliament. All interested parties are invited to comment. The last day for public input is October 31, 1987. Following passage of the legislation, Environment Canada will release a final version of the policy.

4. Regulatory Program

Roll Over of Existing Regulations

Existing regulations developed under the Environmental Contaminants Act, the Clean Air Act, the Canada Water Act, Part III and the Ocean Dumping Control Act will be rolled over or re-enacted to ensure that current protections continue.

Revisions to Existing Regulations

Some regulations will require revision, a process that will begin in the fall of 1987. One aspect of this work will be to ensure that all regulations conform to the Citizens' Code of Regulatory Fairness which guarantees public consultation and participation.

Development of New Regulations

Any new regulations will also be developed in accordance with the Citizens' Code of Regulatory Fairness. Among the more important new regulations include the requirements for manufacturers and importers to supply information on new chemicals for assessment before they can be introduced into the country. Biotechnology also represents an entirely new field for regulation under CEPA. Work will begin now on drafting the new regulations so that the screening of new chemicals can take effect soon after the Act is passed.

5. Existing Chemicals

In addition to the mandatory testing and evaluation of all new chemicals entering Canada, the new legislation calls for extensive evaluation of existing chemicals. This fall, through broadly-based consultation, Environment Canada will develop a Priority Substances List of these chemicals. Canada will also host an Organization for Economic Cooperation and Development (OECD) conference on chemicals in the fall of 1987 to promote international data sharing and set priorities.

Environment Canada will begin immediately the development of two lists required by CEPA:

Domestic Substances List - specifies all chemicals used in Canada.

Non-Domestic Substances List - specifies all chemicals known to be commercially available in the world but not used in Canada. For these chemicals and other new chemicals, industry must provide information to government in order to permit an assessment of the need to control.

CEPA positions governments to impose restrictions, including an absolute ban, before a chemical enters the Canadian marketplace.

6. EARP

The government will release a discussion paper at the end of the summer on options to improve the Environmental Assessment and Review Process (EARP), the major means of assessing federal projects for their impact upon the environment. Among other things, the paper addresses the need to avoid the current duplication in public reviews of federal projects. The paper will provide the basis for consultations with all interested parties.